

SCOTT N. SCHOOLS (SC 9990)  
United States Attorney

BRIAN J. STRETCH (CASBN 163973)  
Chief, Criminal Division

BRYAN R. WHITTAKER (TX 24047097)  
Special Assistant United States Attorney

1301 Clay Street, Suite 340S  
Oakland, California 94612  
Telephone: (510) 637-3680  
Facsimile: (510) 637-3724  
E-Mail: [bryan.whittaker@usdoj.gov](mailto:bryan.whittaker@usdoj.gov)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA, ) No. CR 97-40059 CW &  
Plaintiff, ) CR 07-00344 CW

## **STIPULATION AND [PROPOSED] ORDER EXCLUDING TIME**

KENNETH EUGENE HOLLOWAY,  
Defendant. )  
 )  
 )

21 On September 19, 2007, defendant made his initial appearance in the Northern District of  
22 California on an Indictment filed on May 31, 2007, and on a Supervised Release violation filed  
23 on September 25, 2006. The defendant was brought before Judge Brazil pursuant to a Writ of  
24 Habeas Corpus Ad Prosequendum which was executed by Special Agents for the Bureau of  
25 Alcohol, Tobacco, Firearms & Explosives (“ATF”). ATF agents executed the Writ because the  
26 U.S. Marshals indicated that they were unable to execute the Writ due to the defendant’s pending  
27 charges in Contra Costa County. The Court then appointed J. Frank McCabe to represent the

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1 defendant. The defendant was ordered to appear before Judge Wilken on October 3, 2007. Mr.  
2 McCabe made a request for discovery and discovery was provided by the United States. On the  
3 same day, the defendant was returned to state custody by ATF agents.

4 Another Writ has been issued by the Court to bring the defendant to the October 3, 2007,  
5 hearing before Judge Wilken. However, the U.S. Marshals have again indicated that they will be  
6 unable to execute the Writ because the defendant has pending state charges in Contra Costa  
7 County. ATF agents are unavailable on October 3, 2007, to execute the Writ and will be out of  
8 town on an investigation. Therefore, the defendant will be unable to appear for his October 3,  
9 2007, hearing. The parties respectfully request that the hearing be continued until October 24,  
10 2007, at 2:00 p.m. ATF agents have stated that they will be available to execute a Writ on  
11 October 24, 2007, if needed.

12 The parties stipulate that the time between October 3, 2007, and the next appearance in  
13 the matter on October 24, 2007, should be excluded under the Speedy Trial Act, 18 U.S.C. §  
14 3161(h)(8), for effective preparation of counsel because discovery was recently provided and  
15 counsel needs time to review the discovery. Furthermore, defense counsel will be out on a  
16 vacation, which has been planned for some time, on October 5-15, 2007. Thus, the parties also  
17 agree that time should be excluded for continuity of counsel. The ends of justice outweigh the  
18 interests of the public and the defendant in a speedy trial in this case. This exclusion is necessary  
19 to allow time for the parties to effectively prepare and to allow for continuity of counsel taking

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1 into account the exercise of due diligence.

2 IT IS SO STIPULATED.

3 DATED: October 1, 2007

4 /S/  
5 BRYAN R. WHITTAKER  
6 Special Assistant United States Attorney

7 DATED: October 1, 2007

8 /S/  
9 J. FRANK McCABE  
10 Attorney for Mr. Holloway

11 O R D E R

12 For the foregoing reasons, the Court orders that the defendant's October 3, 2007, hearing  
 13 be continued to October 24, 2007, at 2:00 p.m. The Court further finds that good cause is  
 14 shown—taking into account the public interest—that an exclusion of time between October 3, 2007,  
 15 and October 24, 2007, is warranted under the Speedy Trial Act because it will afford counsel  
 16 reasonable time necessary for effective preparation, taking into account the exercise of due  
 17 diligence. 18 U.S.C. § 3161(h)(8)(B)(iv). Time is also excluded for continuity of counsel based  
 18 upon defense counsel's vacation. The Court finds that the ends of justice served by excluding  
 19 time under the Speedy Trial Act outweigh the best interest of the public and the defendant in a  
 20 speedy trial and in the prompt disposition of criminal cases. *Id.* at § 3161(h)(8)(A). The Court,  
 21 therefore, concludes that this exclusion of time is proper pursuant to 18 U.S.C. § 3161(h)(8).

22 IT IS SO ORDERED.

23 DATED: October \_\_, 2007

24 THE HONORABLE CLAUDIA WILKEN  
25 United States District Judge